Filed 12/12/16 Escobar v. Wells Fargo Bank CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

IRMA ESCOBAR, Plaintiff and Appellant, v. WELLS FARGO BANK et al., Defendants and Respondents.	B265077 (Los Angeles County Super. Ct. No. BC517826)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Reversed and remanded.

Irma Escobar, in pro. per., for Plaintiff and Appellant.

Severson & Werson, Kerry W. Franich, Jan T. Chilton, Jonah S. Van Zandt and Elizabeth Holt Andrews for Defendants and Respondents.

INTRODUCTION

Irma Escobar filed this action for breach of contract, misrepresentation, and negligence against Wells Fargo Bank, N.A. and other entities allegedly involved in foreclosing on her home. She appeals from the judgment entered after the trial court sustained the defendants' demurrer to her second amended complaint without leave to amend. We conclude the trial court erred in ruling Escobar failed to state a claim for fraud and in denying Escobar leave to amend her cause of action for breach of contract. Therefore, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Loan, Request for Modification, and Foreclosure*

In April 2004 Escobar obtained a loan in the amount of $325,850 from Union Federal Bank of Indianapolis (Union Federal) to purchase a home in Norwalk, California.[1] Escobar signed a promissory note in favor of Union Federal, which later transferred the note to the Federal National Mortgage Association (Fannie Mae). To secure the loan, Escobar executed a deed of trust identifying her as the borrower, Union Federal as the lender, and The Wolf Firm as trustee.

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[1] Because Escobar appeals from a judgment after an order sustaining a demurrer, "we accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice." (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 924.)

In 2009 Escobar experienced financial difficulties and failed to make at least three monthly loan payments on time. At some point during that period of time, she contacted America's Servicing Company (ASC), a division of Wells Fargo that serviced her loan, to request "a loan modification review and review of all alternative workout options." After Escobar spoke with ASC over the telephone and submitted a loan modification application and other documentation, ASC provided Escobar with a "trial period plan" (TPP) under the federal Home Affordable Mortgage Program (HAMP).[2] Offered to homeowners eligible for HAMP relief, a TPP reduces a homeowner's monthly loan payment for a specified period. If, at the conclusion of this time period, the homeowner, among other things, has complied with all requirements of the TPP agreement, including making all required payments, the servicer will provide the homeowner with a permanent loan modification. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 788 (*West*); *Corvello v. Wells Fargo Bank, NA* (9th Cir. 2013) 728 F.3d 878, 880-881 (*Corvello*); *Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012) 673 F.3d 547, 556-557 (*Wigod*).)

Escobar made the required payments under the TPP, but did not receive a permanent loan modification. Instead, she received a letter indicating that her loan "was 'transferred' to

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[2] "As authorized by Congress, the United States Department of the Treasury implemented [HAMP] to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.'" (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 785.)

WELLS FARGO for further servicing." She was also informed that, because Wells Fargo was her "new" servicer, she "had to start the process over again." Escobar therefore called Wells Fargo and provided her financial information.

On September 16, 2009 Escobar received a letter from Wells Fargo stating, "Based on our telephone conversation and the financial information you provided, we would like to offer you a Special Forbearance Plan." The letter noted that Escobar's loan was in default, with payments due for July through September 2009, and stated the forbearance plan was "not a waiver of the accrued or future payments that become due, but a period for you to determine how you will be able to resolve your financial hardship." The "Special Forbearance Agreement" (Forbearance Agreement), which was enclosed with the letter, provided: "This plan is an agreement to temporarily accept reduced payments or maintain regular monthly payments during the plan specified below. Upon successful completion of the payments outlined in this plan, your loan will be reviewed for a Loan Modification. . . . [¶] . . . The lender is under no obligation to enter into any further agreement, and this forbearance shall not constitute a waiver of the lender's right to insist upon strict performance in the future. . . . [¶] . . . All of the provisions of the note and security instrument, except as herein provided, shall remain in full force and effect." The Forbearance Agreement required Escobar to make four monthly payments: $2,648.96 by October 2, 2009; $2,712.26 by November 1, 2009; $2,712.26 by December 1, 2009; and $2,712.26 by January 1, 2010.[3] Escobar

[3] Her monthly payment had been $2,616.88.

accepted the Forbearance Agreement and made the four specified payments.

On January 26, 2010 Escobar received a letter from ASC that "confirm[ed] the formal approval of a loan modification/restructure of [her] mortgage loan." This letter and an enclosed "Loan Modification Agreement" set forth the terms of a permanent loan modification. The proposed permanent loan modification did not change the interest rate on Escobar's loan or the loan's repayment terms, but it did capitalize $7,332.47 in unpaid interest. Under the proposed modification agreement, Escobar's monthly payment was approximately $85 higher than her monthly payment under the original terms of the loan. The due date for the first payment under the proposed modification was April 1, 2010.

Escobar called Wells Fargo to discuss the proposed new monthly payment because it was no more affordable than her original monthly payment. The person with whom Escobar spoke told her the amount of the monthly payment in the proposed modification was a "clerical error" and Wells Fargo would send her a corrected written statement of the monthly payment amount before April 1, 2010. This person instructed Escobar to sign and return the documents required to accept the loan modification and wait for further instructions. Escobar did as she was told.

Because by mid-March 2010 Escobar had not received a corrected statement of her new monthly loan payment, she called Wells Fargo to ask for one.[4] Wells Fargo instructed Escobar "not

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[4] At times Escobar alleges in the second amended complaint that she made this call to ASC, a division of Wells Fargo, rather than Wells Fargo. Escobar's allegations, however, appear to refer to ASC and Wells Fargo interchangeably, and a distinction

to make any payments until [it] corrected [its] error on the proposal for a permanent modification," and "promised it would not initiate a foreclosure while [Escobar] waited because Wells Fargo was going to correct the proposal." Escobar never received a corrected written statement of her modified monthly loan payment, and apparently made no further payments on her loan.

On April 15, 2010 NDEx West, LLC, acting as substituted trustee under the deed of trust securing Escobar's loan, recorded a notice of default and election to sell under deed of trust.[5] In July 2010 NDEx West recorded a notice of trustee's sale, and on August 11, 2010 Fannie Mae purchased the property at the trustee's sale. The following month Fannie Mae filed an unlawful detainer action against Escobar. The trial court in that case

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between these two entities is not material to the issues in this appeal.

[5] The trial court granted the defendants' request for judicial notice of, among other documents, the recorded substitution of trustee, notice of default and election to sell under deed of trust, notice of trustee's sale, and an October 9, 2012 order of the United States District Court, Central District of California, granting a motion to remand in *Federal National Mortgage Association v. Irma E. Escobar* (C.D.Cal., CV 12-07603 SJO (FFMx)). The trial court properly took judicial notice of the existence and facial contents of those documents under Evidence Code sections 452, subdivisions (c), (d), and (h), and 453. (See *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 924, fn. 1; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-266.) "We therefore take notice of their existence and contents, though not of disputed or disputable facts stated therein." (*Yvanova*, *supra*, at p. 924, fn. 1; see Evid. Code, § 459, subd. (a).)

eventually granted summary judgment against Escobar, and on December 8, 2012 Fannie Mae evicted Escobar from the property.

B. *This Action*

In August 2013 Escobar filed this action against Wells Fargo, Fannie Mae, and NDEx West. After the trial court sustained demurrers to Escobar's original and first amended complaints, Escobar filed a second amended complaint, asserting causes of action for breach of contract, misrepresentation, and negligence. The second amended complaint did not assert any causes of action against NDEx West, and the trial court dismissed that entity from the case with Escobar's consent. Wells Fargo and Fannie Mae filed a demurrer to Escobar's second amended complaint, setting it for hearing on March 5, 2015 at 8:30 a.m. Escobar filed an opposition to the demurrer.

On March 4, 2015, the day before the hearing on the demurrer, counsel for Escobar sent by fax a "Request for Second Call - Due to Calendar Conflict," requesting "SECOND CALL to at least 11:00" a.m. because counsel for Escobar had to attend a hearing on an ex parte application in Orange County Superior Court at 9:00 a.m.

On March 5, 2015 the trial court, apparently unaware of counsel for Escobar's fax asking for "second call," called the demurrer for hearing twice, the second time at 9:42 a.m. The court noted that counsel for Escobar had not appeared or contacted the court. Counsel for Wells Fargo and Fannie Mae informed the court that counsel for Escobar had called late the previous afternoon "saying she had another hearing and requesting second call." The trial court sustained the demurrer without leave to amend "on the grounds set forth in the moving

papers, except for the argument that the bankruptcy petition valued the claim at $0.00." Escobar timely appealed.

DISCUSSION

"The standard governing our review of an order sustaining a demurrer is well established. We review the order de novo, 'exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.]' [Citation.] ""We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff."" (*Lefebvre v. Southern California Edison* (2016) 244 Cal.App.4th 143, 151; accord, *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751-752.)

A. *The Trial Court Properly Sustained the Demurrer to Escobar's Cause of Action for Breach of Contract, but Should Have Given Her Leave To Amend Her Cause of Action for Breach of Written Contract*

Escobar's cause of action for breach of contract alleged a breach of a written contract and a breach of an oral contract. "The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" (*Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; accord, *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

1. *Breach of Written Contract*

Escobar alleges that the September 2009 Forbearance Agreement required Wells Fargo and Fannie Mae[6] to "permanently modify [her] loan into a 'more affordable' loan if she complied with the [Forbearance Agreement] by making the required . . . payments, submitting the required paperwork and so long as her representations remained true." She alleges that, although she complied with her obligations, Wells Fargo and Fannie Mae breached their obligations by offering her a loan modification in January 2010 that was not "more affordable."

The Forbearance Agreement, however, did not require Wells Fargo or Fannie Mae to modify Escobar's loan at all. Rather, the agreement provided that, "[u]pon successful completion of the payments outlined in this plan, [Escobar's] loan will be reviewed for a Loan Modification." The Forbearance Agreement also stated: "The lender is under no obligation to

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6 Escobar alleges that throughout the events described in the second amended complaint Wells Fargo and Fannie Mae acted as each other's agent. In her breach of contract cause of action, Escobar also asserts that "ASC was acting as WELLS FARGO and Fannie Mae's authorized representative or agent concerning the allegations made in this cause of action."

enter into any further agreement, and this forbearance shall not constitute a waiver of the lender's right to insist upon strict performance in the future."

Nevertheless, Escobar contends that, because Wells Fargo offered her the Forbearance Agreement as a TPP under HAMP, the court should interpret the Forbearance Agreement in light of HAMP guidelines, which, according to her, obligated Wells Fargo (and Fannie Mae) to "provide [her] with a 'more affordable' loan after she performed" her obligations under the agreement. In support of her contention, Escobar cites cases holding that a particular TPP agreement, interpreted in light of HAMP guidelines, obligated the lender or its agent to permanently modify the homeowner's loan if the homeowner satisfied his or her obligations under the TPP, even when the language of the TPP agreement did not expressly obligate the lender to do so. (See *West*, *supra*, 214 Cal.App.4th at pp. 796-799; *Corvello*, *supra*, 728 F.3d at pp. 883-885; *Wigod*, *supra*, 673 F.3d at pp. 564-566; see also *Lueras v. BAC Home Loans Servicing* (2013) 221 Cal.App.4th 49, 72-74 (*Lueras*) [reaching a similar conclusion regarding a forbearance agreement offered under Fannie Mae's HomeSaver Forbearance program].)[7]

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[7] "In 2009, Fannie Mae instituted the HomeSaver Forbearance program, which was available to those who did not qualify for HAMP loan modifications." (*Lueras*, *supra,* 221 Cal.App.4th at p. 56.) The program's guidelines provided that "[a] servicer should offer a HomeSaver Forbearance if . . . borrowers [in default or at risk of default] have a willingness and ability to make reduced monthly payments of at least one-half of their contractual monthly payment. The plan should reduce the borrower's payments to an amount the borrower can afford, but no less than 50 percent of the borrower's contractual monthly payment, including taxes and insurance and any other escrow

This argument fails for three reasons. First, despite Escobar's conclusory allegation to the contrary, neither the Forbearance Agreement nor the letter that accompanied it indicates the Forbearance Agreement was a TPP under HAMP. (See *Lueras*, *supra*, 221 Cal.App.4th at p. 56 [on review of a ruling on a demurrer, "[i]f the facts expressly alleged in the complaint conflict with an exhibit, the contents of the exhibit take precedence"]; cf. *West*, *supra*, 214 Cal.App.4th at p. 796; *Corvello*, *supra*, 728 F.3d at pp. 881-882; *Wigod*, *supra*, 673 F.3d at pp. 558-559.) Thus, there is no basis for interpreting the Forbearance Agreement in light of HAMP guidelines. (See *Vu Nguyen v. Aurora Loan Services, LLC* (9th Cir. 2015) 614 Fed.Appx. 881, 884 ["Workout Agreement" was a "commercial, in-house agreement" offered to the homeowner by the servicer, not a TPP under HAMP or a forbearance under the HomeSaver program, and it did not obligate the servicer to offer a permanent loan modification].)

Second, the cases on which Escobar relies are distinguishable because none of the agreements in those cases included, as did the Forbearance Agreement in this case, a provision stating that "[t]he lender is under no obligation to enter into any further agreement." Rather, the agreements in those cases either promised the servicer *would* offer a permanent

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items at the time the forbearance is implemented. During the six month period of forbearance, the servicer should work with the borrower to identify the feasibility of, and implement, a more permanent foreclosure prevention alternative. The servicer should evaluate and identify a permanent solution during the first three months of the forbearance period and should implement the alternative by the end of the sixth month.'" (*Ibid.*) Escobar does not contend her Forbearance Agreement was a forbearance under the HomeSaver Forbearance program.

modification if certain conditions were satisfied (*Corvello*, *supra*, 728 F.3d at p. 881; *Wigod*, *supra*, 673 F.3d at p. 560) or did not address the servicer's obligation (*Lueras*, *supra*, 221 Cal.App.4th at pp. 72-73; *West*, *supra*, 214 Cal.App.4th at pp. 796-798).

Third, even if the Forbearance Agreement were a TPP that, interpreted in accordance with HAMP guidelines, obligated Wells Fargo to offer Escobar a permanent loan modification, Wells Fargo did in fact offer Escobar a permanent loan modification. And Escobar has not identified any HAMP guideline the terms of that modification may have violated.

Thus, the trial court properly sustained the demurrer to Escobar's breach of written contract cause of action. Nevertheless, Escobar does appear to allege that, prior to entering into the Forbearance Agreement with Wells Fargo, she received, accepted, and fulfilled the conditions of a separate TPP from ASC. Escobar further alleged "ASC sent her a temporary payment plan 'TPP' under the HAMP program," and she made all of her payments "under the TPP but she did not receive permanent modification under HAMP as promised." Escobar is entitled to leave to amend to assert a breach of the TPP, which, depending on the terms of the TPP, may state a claim for breach of written contract. (See C*ity of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 870 ["[i]n assessing whether plaintiffs should be allowed leave to amend, we determine de novo whether the complaint states facts sufficient to state a cause of action under any possible legal theory," and "[w]e are not limited to plaintiffs' theory of recovery or "'form of action"' pled in testing the sufficiency of the complaint"]; *Aubry v. Tri–City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971 [whether trial court abused its discretion in sustaining demurrer without leave to amend "is reviewable on appeal 'even in the absence of a request for leave to

amend' [citations], and even if the plaintiff does not claim on appeal that the trial court abused its discretion in sustaining a demurrer without leave to amend"]; *Villery v. Department of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407, 413 ["[w]hen a demurrer is sustained, appellate courts conduct a de novo review to determine whether the pleading alleges facts sufficient to state a cause of action under any legal theory"]; *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 326 ["reverse if plaintiff states viable cause of action under any theory"]; see also Code Civ. Proc., § 472c, subd. (a) ["[w]hen any court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made"]; *Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044 ["plaintiff may request leave to amend for first time on appeal"].)

2. *Breach of Oral Contract*

Escobar alleges that in March 2010 Wells Fargo orally promised it would not initiate foreclosure proceedings while it corrected an error in its permanent loan modification offer, but then breached that promise on August 11, 2010 when, without having corrected the error, Wells Fargo sold Escobar's home at a foreclosure sale. As Wells Fargo correctly argues, the applicable two-year statute of limitations bars Escobar from asserting this breach of oral contract claim. (Code Civ. Proc., § 339, subd. (1); see *Lucioni v. Bank of America, N.A.* (2016) 207 Cal.Rptr.3d 418, 427 ["[t]he statute of limitations on a claim for a breach of an oral contract is two years"].)

"The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues."

(*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 (*Aryeh*).) "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806; see *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1341 ["[t]raditionally, a claim accrues ""when [it] is complete with all of its elements'—those elements being wrongdoing [or breach], harm, and causation"""].) Thus, "ordinarily, the statute of limitations runs from 'the occurrence of the last element essential to the cause of action.'" (*Aryeh*, *supra,* 55 Cal.4th at p. 1191.)

Escobar alleges Wells Fargo breached its oral promise to her by selling her home at a foreclosure sale on August 11, 2010, causing her damages and loss of her property. Thus, the alleged breach of oral contract accrued on August 11, 2010. Because Escobar did not file this action until August 2013, the two-year statute of limitations bars Escobar's cause of action for the alleged breach.

Escobar argues that, under the continuing violation doctrine, her cause of action for breach of oral contract did not accrue until the "last injury" she suffered, which she alleges occurred when Fannie Mae evicted her in December 2012, or until the "tortious acts cease," which she alleges has yet to occur because of continuing damage to her credit. Escobar is incorrect. "The continuing violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them." (*Aryeh*, *supra*, 55 Cal.4th at p. 1192.) Under this doctrine, "'a pattern of reasonably frequent and similar acts may . . . justify treating the acts as an indivisible course of conduct actionable in its entirety,

notwithstanding that the conduct occurred partially outside the limitations period.'" (*Gilkyson v. Disney Enterprises, Inc.*, *supra*, 244 Cal.App.4th at p. 1341, fn. 3.) The doctrine does not apply here because Escobar's allegations of a breach of oral contract identify a "discrete, independently actionable alleged wrong[ ]," which was apparent as early as April 2010, when the notice of default and intent to sell was recorded, but certainly no later than the August 2010 foreclosure sale. (See *Aryeh, supra*, at p. 1198; cf. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1058 [applying the doctrine where the component acts of retaliation "have not yet become ripe for adjudication" and the plaintiff "may not yet recognize" the acts "as part of a pattern of retaliation"].)

Because it is not reasonably possible Escobar can amend to avoid the statute of limitations for breach of oral contract, the trial court did not abuse its discretion in sustaining the demurrer to the breach of oral contract claim without leave to amend. (See *Lucioni v. Bank of America, N.A.*, *supra*, 207 Cal.Rptr.3d at p. 427 ["[t]he cause of action is barred by the two-year statute of limitations applicable to an alleged breach of an oral contract, and such a defect cannot be cured by amendment"].)

B. *The Trial Court Erred in Sustaining the Demurrer to Escobar's Cause of Action for Fraudulent Misrepresentation*

Escobar also asserted a cause of action against Wells Fargo and Fannie Mae for fraudulent misrepresentation. The elements of that cause of action are "(1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended

to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*Lueras*, *supra*, 221 Cal.App.4th at p. 78; accord, *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166.) "Each element must be alleged with particularity." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (*Beckwith*).)

Escobar's allegations state a claim for misrepresentation. She alleges that on March 15, 2010 Wells Fargo instructed her not to make payments on her modified loan until she received a corrected statement of the payment due and promised not to foreclose on her home in the meantime. She alleges Wells Fargo knew the representation that it would not foreclose on her home while she waited for a corrected statement was false and Wells Fargo intended her to rely on it. Reasonably interpreted, the second amended complaint alleges Escobar relied on that misrepresentation by not making further payments on the loan, as instructed. (See *Coker v. JPMorgan Chase Bank, N.A.* (2016) 62 Cal.4th 667, 671 ["[i]n reviewing a judgment sustaining a demurrer without leave to amend, we give the complaint a reasonable interpretation"].) As a result, Escobar alleges, she lost her home to foreclosure.

Wells Fargo contends that Escobar did not sufficiently allege "who at Wells Fargo" made the misrepresentation "or how" that individual made the misrepresentation. Citing *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153 (*Tarmann*), Wells Fargo suggests that Escobar had to allege "the name of the person who made the misrepresentation, his or her authority to speak for the corporation, to whom he or she spoke, what was said, and when." (See *id.* at p. 157.) But Escobar's allegation that a Wells Fargo employee made the misrepresentation to her during a telephone call on March 15,

2010 is sufficient, and the fact that Escobar cannot yet identify the employee by name is not dispositive. As the court in *Tarmann* observed, where, as here, the allegations suggest such "facts lie more in the knowledge of the opposite party," the "requirement of specificity [in alleging fraud] is relaxed." (*Id.* at p. 158; accord, *Daniels v. Select Portfolio Servicing, Inc.*, *supra*, 246 Cal.App.4th at p. 1167; see *West*, *supra*, 214 Cal.App.4th at p. 794 ["[t]he identification of the [the bank] employees who spoke with [the plaintiff] on those dates is or should be within [the bank's] knowledge"]; see also *Susilo v. Wells Fargo Bank, N.A.* (C.D.Cal. 2011) 796 F.Supp.2d 1177, 1191 [under California law, "[w]hile the already heightened pleading standard is further heightened when a party pleads fraud against a corporation, . . . the requirement is relaxed where 'the defendant must necessarily possess full information concerning the facts of the controversy,' . . . or 'when the facts lie more in the knowledge of the opposite party'"].)

Wells Fargo also argues that Escobar could not have reasonably relied on its alleged misrepresentation after receiving the April 2010 notice of default and July 2010 notice of trustee's sale. However, ""[w]hether reliance [on a misrepresentation] was reasonable is a question of fact for the jury, and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion."" (*Broberg v. Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921; see *Beckwith*, *supra*, 205 Cal.App.4th at p. 1067 [""[e]xcept in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact""].) Particularly because Escobar appears to allege the March 2010 misrepresentation was a repetition of what Wells Fargo had

represented to her in January 2010, this is not that "rare case where the undisputed facts leave no room for a reasonable difference of opinion" on whether Escobar's alleged reliance on the misrepresentation was reasonable. (*Beckwith*, at p. 1067.)

C. *The Trial Court Did Not Abuse Its Discretion in Sustaining the Demurrer to Escobar's Cause of Action for Negligence Without Leave To Amend*

Escobar also asserted a cause of action for negligence based on allegations that Wells Fargo negligently processed her loan modification application, which caused her to lose her home through the foreclosure sale in August 2010. "The elements of a cause of action for professional negligence are failure to use the skill and care that a reasonably careful professional operating in the field would have used in similar circumstances, which failure proximately causes damage to plaintiff." (*Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 604.)

As with Escobar's assertion of a breach of oral contract cause of action, however, her negligence cause of action is barred by the applicable two-year statute of limitations (see Code Civ. Proc., § 339, subd. (1); *Thomson v. Canyon*, *supra*, 198 Cal.App.4th at p. 606), which began to run with "'the occurrence of the last element essential to the cause of action'" (*Aryeh*, *supra*, 55 Cal.4th at p. 1191), i.e., the August 2010 foreclosure sale. As explained in connection with Escobar's cause of action for breach of oral contract, the continuing violation doctrine does not apply. The trial court did not abuse its discretion in sustaining the

demurrer to Escobar's negligence cause of action without leave to amend.[8]

DISPOSITION

The judgment is reversed. The trial court is directed to vacate its order sustaining the demurrer to the second amended complaint without leave to amend and to enter a new order sustaining the demurrer to the breach of contract cause of action with leave to amend to allege a claim for breach of written contract, overruling the demurrer to the fraudulent

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[8] Escobar suggests the trial court erred by proceeding with the hearing on the demurrer in the absence of her attorney, who, the day before the hearing, sent the court a request to hear the demurrer on "second call." We have serious doubts about the merits of this contention. As a general matter, there is no "second call" in the individual calendar unlimited civil departments of the Los Angeles Superior Court. Civil courtrooms hear case management conferences, motions, and other matters at 8:30 a.m. or 9:00 a.m., and at the conclusion of the morning calendar proceed with jury or court trials. Counsel for Escobar could have filed a request to continue the hearing to another date, but did not do so. Moreover, the request did not include the supporting declarations required by California Rules of Court, rule 3.1201. In any event, the ""power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law."" (*Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 576.) Escobar has not shown an abuse of discretion by, for example, stating what counsel could have argued at the hearing that was not in her opposition papers. Nevertheless, because we are reversing the judgment and remanding for further proceedings, Escobar or her attorney will have an opportunity to (comply with the rules of court and) appear at future hearings.

misrepresentation cause of action, and sustaining the demurrer to the negligence cause of action without leave to amend.

Escobar is to recover her costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

KEENY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.